

OAH Docket No. 8-2500-19094-2

MPUC Docket No. PL9/CN-07-464 (Certificate of Need)
MPUC Docket No. PL9/PPL-07-360 (Route)

MPUC Docket No. PL-9/CN-07-465 (Certificate of Need)
MPUC Docket No. PL-9/PPL-07-361 (Route)

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Enbridge Energy, Limited Partnership
and Enbridge Pipelines (Southern
Lights) LLC for a Certificate of Need for
the Alberta Clipper Pipeline Project and
the Southern Lights Diluent Project

**ORDER CERTIFYING
MOTION TO COMMISSION**

AND

and

SECOND PREHEARING ORDER

In the Matter of the Application of
Enbridge Energy, Limited Partnership
and Enbridge Pipelines (Southern
Lights) LLC for a Routing Permit for the
Alberta Clipper Pipeline Project and the
Southern Lights Diluent Project

A prehearing conference was held on October 18, 2007, at 1:00 p.m. in the Commission's large hearing room before Administrative Law Judge Eric L. Lipman. The following persons noted their appearance:

Kevin Walli, John R. Gasele and Thomas Pearson of Fryberger, Buchanan, Smith & Frederick, P.A., 332 Minnesota Street - Suite W-1260, St. Paul, MN 55101, appeared on behalf of Enbridge Limited Partnership and Enbridge Pipelines LLC (the applicant or Enbridge).

Valerie M. Means and Karen Finstad Hammel, Office of the Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared on behalf of the Department of Commerce (the DOC).

Also present at the prehearing conference were:

Robert Cupit and Bret Eknes, Minnesota Public Utilities Commission, Suite 350, 121 East Seventh Place, St. Paul,, MN 55101-2147, on behalf of the Public Utilities Commission (the Commission or MPUC).

Larry Hartman and Deborah Pile, Minnesota Department of Commerce, 85 7th Place East, Suite 500, St. Paul, MN 55101-2198.

On October 3, 2007, Applicants Enbridge Energy Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C., moved for an order regarding separation of Minnesota Public Utilities Commission ("Commission") Docket No: PL9/PPL-07-361 from OAH Docket No. 8-2500-19094-2, requesting that the October 10, 2007 deadline for the submission of route proposals for the above-referenced docket be waived for the areas south and east of Clearbrook, Minnesota, establishing a new calendar, and certifying a question to the full Commission.

Based upon the discussions during the prehearing conference, the submissions of the parties and upon all of the files, the Administrative Law Judge makes the following:

CERTIFICATION OF MOTION

Pursuant to Minn. Rule 1400.7600, motions may be certified to the agency in circumstances where a delay in finally determining the motion "until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning" or "the issues are solely within the expertise of the agency."¹

In this proceeding the applicant requests to extend the schedule for completing proceedings under the Commission's dockets PL-9/CN-07-465 and PL-9/PPL-07-361. The applicants' requested relief relates directly to the terms of the Commission's earlier referral orders, making certification appropriate.

Accordingly, the following questions are certified to the Commission:

- (1) Whether the nine-month statutory deadline for the issuance of the Routing Permit for the Alberta Clipper and Southern Lights Diluent Projects under MPUC Docket Number PL9/PPL-07-361 should be varied from March 22, 2008 to July 22, 2008?
- (2) Whether the twelve-month statutory deadline for the issuance of the Certificate of Need for the Alberta Clipper and Southern Lights Diluent Projects under MPUC Docket Number PL9/PPL-07-465 should be varied from June 22, 2008 to July 22, 2008?

¹ See, Minn. R. 1400.7600 (D) and (F) (2005).

- (3) Whether the October 10, 2007 deadline for the submission of Route Proposals for MPUC Docket No. PL9/PPL-07-361 should be suspended for areas south and east of Clearbrook, Minnesota?

The ALJ makes no recommendation to the Commission concerning the the applicant's request for relief. However, by way of a Second Prehearing Order that accompanies this Certification, the Administrative Law Judge has entered a Scheduling Order in the various dockets such that granting the applicant's request would be possible, should the Commission otherwise determine that granting the request was appropriate.

Any further filings concerning this Motion shall be made directly to the Commission.

SECOND PREHEARING ORDER

Based upon the discussions during the prehearing conference, the submissions of the parties and upon all of the files, the Administrative Law Judge makes the following ORDER:

Accordingly, the following questions are certified to the Commission:

- (1) The motion to sever Docket No: PL9/PPL-07-361 from OAH Docket No. 8-2500-19094-2 is DENIED.
- (2) The First Prehearing Order is modified as set forth below.
- (3) The parties are directed to submit further proposed changes to this Order, if any, by Friday, January 11, 2008, in advance of the Third Prehearing Conference scheduled for January 17, 2008 at 1:00 p.m.
- (4) The Applicant will publish notice in a form to be approved by the Administrative Law Judge in newspapers of general circulation in the areas north and west of Clearbrook, Minnesota. The Applicant will also mail the notice directly to all persons reasonably likely to be affected by the proposed projects along the entire proposed route. Further, persons reasonably likely to be affected in the areas south and west of Clearbrook, Minnesota, shall receive a letter explaining the change in the calendar of proceedings for those areas.

Below is an abbreviation key for the accompanying Scheduling Order:

ABBREVIATION	FULL PROJECT NAME	MPUC DOCKET
LSR CON	LSr Certificate of Need	PL9/CN-07-464
LSR PRP	LSr Pipeline Routing Permit	PPL-07-360
AC CON	Alberta Clipper/Southern Lights Diluent Project Certificate of Need	PL9/CN-07-465

AC PRP	Alberta Clipper/Southern Lights Diluent Project Pipeline Routing Permit	PPL-07-361
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Further, rows that are followed by a Gray Box and an “X” correspond to dates and activities for proceedings that relate to areas north and west of Clearbrook, Minnesota.

DATE	DEADLINE	DOCKETS INVOLVED	N & W
October 30, 2007	Route Proposal review and reply	LSr PRP AC PRP: NW of Clearbrook	X
October 30, 2007	PUC consideration of alternative routes (as noticed by the PUC on October 18, 2007)	LSr PRP AC PRP: NW of Clearbrook	X
November 5, 2007	PUC order on accepted route alternatives	LSr PRP AC PRP: NW of Clearbrook	X
November 5, 2007	Notice process for LSr and AC NW of Clearbrook. Notice mailed to landowners and newspaper publication process started.	LSr PRP LSr CON AC PRP: NW of Clearbrook AC CON: NW of Clearbrook	X
November 9, 2007	Pre-filed direct testimony for the Pipeline Routing Permits	LSr PRP AC PRP: NW of Clearbrook	X
November 9, 2007	Comparative environmental analysis of route alternatives	LSr PRP AC PRP: NW of Clearbrook	X
November 26-29, 2007	Public Meetings and Hearings in Kittson, Marshall, Red Lake, Pennington, Polk and Clearwater counties (see below)	LSr PRP LSr CON AC PRP: NW of Clearbrook AC CON: NW of Clearbrook	X
December 6, 2007	Deadline for intervention as a party in the LSr pipeline routing permit	LSr PRP	X
December 14, 2007	Deadline for public comments in the LSr certificate of need	LSr CON	X
December 21, 2007	Deadline for responses to public comments on the LSr certificate of need and pipeline routing permit.	LSr PRP LSr CON	X
December 21, 2007	Deadline for all parties to file rebuttal testimony in the LSr certificate of need	LSr CON	X
January 4, 2008	Surrebuttal testimony in the LSr CON	LSr CON	X

DATE	DEADLINE	DOCKETS INVOLVED	N & W
January 7, 2008	Alberta Clipper/Southern Lights Diluent preferred route and alignment SE of Clearbrook filed by Applicant	AC PRP: SE of Clearbrook	
January 17, 2008	3 rd Pre-hearing conference	LSr PRP LSr CON AC PRP AC CON	
January 18, 22, 2008	Contested Case Proceeding	LSr CON	X
February 1, 2008	Post-hearing briefs filed in the LSr CON	LSr CON	X
February 5, 2008	Route alternatives for Alberta Clipper/Southern Lights Diluent SE of Clearbrook (Date subject to PUC approval)	AC PRP: SE of Clearbrook	
February 8, 2007	Reply briefs due	LSr CON	X
February 20, 2207	Route proposal review and reply	AC PRP: SE of Clearbrook	
February 28, 2008	PUC Consideration of alternative routes	AC PRP: SE of Clearbrook	
March 6, 2008	PUC Order regarding alternative routes	AC PRP: SE of Clearbrook	
March 7, 2008	Notice process for Alberta Clipper/Southern Lights Diluent SE of Clearbrook. Notice mailed to landowners and newspaper publication process started	AC PRP: SE of Clearbrook AC CON	
March 10, 2008	ALJ Report for the LSr Project	LSr: PRP LSr: CON	X
March 11, 2008	Pre-filed testimony in the Alberta Clipper/Southern Lights Diluent pipeline routing permit southeast of Clearbrook	AC PRP: SE of Clearbrook	
March 11, 2008	Comparative environmental analysis of route alternatives	AC PRP: SE of Clearbrook	
March 31 to April 3, 2008	Public Meetings and Hearings in Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis, and Carlton counties	AC CON AC PRP: SE of Clearbrook	

DATE	DEADLINE	DOCKETS INVOLVED	N & W
April 8, 2008	Deadline for intervention as a party	AC PRP	
April 15, 2008	Deadline for public comments for the certificate of need and pipeline routing permit	AC CON AC PRP	
April 22, 2008	Response to public comments	AC CON AC PRP	
April 22, 2008	Rebuttal testimony due in the certificate of need matter	AC CON	
May 6, 2008	Surrebuttal testimony due	AC CON	
May 13-14, 2008	Contested Case Hearing	AC CON	
May 21, 2008	Post-hearing briefs due	AC CON AC PRP	
May 28, 2008	Reply briefs due	AC CON AC PRP	
June 23 or 24, 2008	ALJ Report	AC CON AC PRP	

IV. Hearing Schedule for November 27-29

The following dates, times, and locations are established for the public meetings and hearings to be held on November 27-29, 2007.

COUNTY	CITY	MEETING LOCATION	DATE AND TIME
Kittson	Kennedy	VFW & Café 103 5 th St. E.	Tuesday, Nov. 27, 10:00 a.m.
Marshall	Argyle	Argyle Community Center 701 Pacific Avenue	Tuesday, Nov. 27, 5:00 p.m.
Red Lake	Oklee	Oklee Community Hall 2 nd Ave. between fire hall and gas station (no physical address listed on building)	Wednesday, Nov. 28, 10:00 a.m.
Pennington	Thief River Falls	Best Western Meeting Room 1060 Highway 32 South	Wednesday, Nov. 28, 5:00 p.m.
Polk	Gully	Gully Community Center 120 S. Main St.	Thursday, Nov. 29, 9:00 a.m.
Clearwater	Clearbrook	City Hall Band Room 200 Elm St. SE	Thursday Nov. 29, 5:00 p.m.

These hearings will establish the complete public hearing record for the LSR Certificate of Need and Pipeline Routing Permit applications, as well as begin (but not conclude) the public hearing record for the Alberta Clipper and Southern Lights Diluent projects.

Dated: October 25, 2007

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge